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on behalf of herself and all others similarly situated

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MACKENZIE ANNE THOMA, an
individual and on behalf of herself and
all others similarly situated,

Plaintiff,

v.

VXN GROUP, LLC., a Delaware
limited liability company; STRIKE 3
HOLDINGS, LLC., a Delaware limited
liability company; GENERAL MEDIA
SYSTEMS, LLC., a Delaware limited
liability company; MIKE MILLER, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 2:23-cv-04901-WLH

*[Assigned for all purposes to the Hon.
Wesley L. Hsu]*

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR
EXTENSION OF TIME TO
RESPOND TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

MEMORANDUM OF POINTS AND AUTHORITIES

I. Statement of Facts

Plaintiff filed this putative class action against Defendants in California Superior Court on April 20, 2023. This case was removed to federal court on June 21, 2023. On June 29, 2023, Defendants moved to dismiss Plaintiff's original complaint. On July 21, 2023 Plaintiff moved to remand this action back to the Los Angeles Superior Court. On August 30, 2023, this court severed Plaintiff's claim of Unfair Competition and remanded to state court, but keeping the other causes of action in federal court.

On September 1, 2023, Defendants' counsel, Mr. Eric Clopper ("Mr. Clopper") asked Plaintiff's counsel ("Ms. Cohen") to meet and confer regarding all Wage and Hour Claims. See Declaration of Sarah H. Cohen ¶ 2, Exhibit A. On September 15, 2023, Mr. Clopper sent a follow up email to Ms. Cohen requesting to meet and confer on the anticipated Demurrers and Pleas in Abatement. See Declaration of Sarah H. Cohen ¶ 3, Exhibit B. On September 17, 2023, Mr. Clopper emailed Ms. Cohen with a detailed analysis of Defendants' legal and factual bases for Defendants' anticipated Demurrers on Pleas in Abatement. See Declaration of Sarah H. Cohen ¶ 4, Exhibit C. That same day, Ms. Cohen agreed to meet and confer to discuss the anticipated Demurrers and Pleas in Abatement. See Declaration of Sarah H. Cohen ¶ 5, Exhibit D.

On September 18, 2023, the parties met and conferred and discussed what amendments and claims shall be included in the First Amended Complaint. Here, Ms. Cohen, in no uncertain terms, assured Mr. Clopper that there will be absolutely no extensions in time for any responsive pleadings. See Declaration of Sarah H. Cohen ¶ 6, Exhibit E. On September 20, 2023, Plaintiff filed her first Amended Complaint.

On October 2, 2023, two days before Defendants' motion to dismiss was due, Mr. Clopper emailed Ms. Cohen requesting a two week extension for filing a motion to dismiss as to this action, admitting Defendant had failed to fully meet and confer

1 thus far. See Declaration of Sarah H. Cohen ¶ 7, Exhibit F. On October 3, 2023, Ms.
2 Cohen informed Mr. Clopper that, per Local Rule 7-3, the parties were required to
3 meet and confer at least seven days prior to when a responsive pleading is due. Ms.
4 Cohen informed Mr. Clopper this never occurred, as such they are not in compliance
5 with the rules set forth by this court. Ms. Cohen subsequently denied Defendants'
6 request. See Declaration of Sarah H. Cohen ¶ 8, Exhibit G.

7 **II. Arguments**

8 **A. Defendants Never Met and Conferred With Plaintiff.**

9 Fed. R. Civ. P. 15(a)(3) provides that the final day to file a responsive pleading
10 is 14 days after that party has been served with the amended complaint. Plaintiff filed
11 and served her First Amended Complaint on September 20, 2023. As such, a
12 responsive pleading is due on October 4, 2023. Furthermore, in accordance with
13 Local Rule 7-3, Defendants are obligated to meet and confer with Plaintiff regarding
14 any potential matters to be discussed in a Motion to Dismiss at least seven days prior
15 to the filing of the motion. Since the final day to file a responsive pleading is October
16 4, 2023, the final day for Defendants to meet and confer was September 27, 2023. No
17 such meet and confer ever occurred.

18 Per Local Rule 7-4, this honorable court may decline to consider a motion if it
19 does not comply with the requirements set forth in Local Rule 7-3. As such, since a
20 meet and confer never occurred, and the moving papers are in no way in compliance
21 with this court's moving papers, this motion must be denied.

22 **B. Fed. R. Civ. P. 6 Is Inapplicable In This Case.**

23 A. Good Cause Does Not Exist for The Extension Of Time For The Motion To
24 Dismiss

25 Fed. R. Civ. P. 6 states, in relevant part, that "When an act may or must be done
26 within a specified time, the court may, for good cause, extend the time: with or without
27 motion or notice if the court acts, or if a request is made, before the original time or
28 its extension expires..." The standard for good cause depends on the movant's

1 diligence in attempting to meet deadlines or whether the opposing party is in party
2 responsible for the delay. Rule 6. Computing and Extending Time; Time for Motion
3 Papers, 1 Federal Rules of Civil Procedure, Rules and Commentary Rule 6. The time
4 for extension should by no means be considered a matter of right. § 1165 Extending
5 Time—In General, 4B Fed. Prac. & Proc. Civ. § 1165 (4th ed.).

6 Defendants have failed to show any good cause that calls for the granting of an
7 extension. Defendants had fourteen days to file their Motion to Dismiss, however
8 Defendants claim that because of a five day arbitration they were wholly unable to
9 file their motion. This is problematic for several reasons.

10 First, Defendants claim that the five day arbitration that Mr. Clopper and Mr.
11 Brad Kane (“Mr. Kane”) partook in overlaps with the deadline to file a responsive
12 pleading in this case. Although this is true, there is only a two day overlap between
13 when the arbitration was set to take place and when Mr. Clopper and Mr. Kane were
14 set to partake in their arbitration. Defendants still had 12 days out of the original 14
15 to research, analyze and prepare their motion to dismiss. Further, Defendant had a
16 preliminary understanding of the claims and facts pleaded in Plaintiff’s First
17 Amended Complaint even before the complaint was filed. On September 17, 2023,
18 Mr. Clopper already had a preliminary analysis prepared for Defendants’ motion to
19 dismiss. Although Plaintiff did add some additional facts to the First Amended
20 Complaint, the underlying facts, claims, and arguments remained exactly the same as
21 the original complaint. Furthermore, Defendant requested the extension two days
22 before the deadline. A request for extension this close to the deadline would
23 unequivocally prejudice Plaintiff.

24 Defendants therefore had ample time to prepare and submit their Motion to
25 Dismiss. It is not Plaintiff’s and Ms. Cohen’s responsibility to ensure Mr. Clopper
26 and Mr. Kane finish their work in a timely manner. Counsel herself was involved in
27 several grueling mediations that required hours of preparation in the past month, yet
28 it is not Defendants’ responsibility to ensure she meets all of her deadlines in a timely

1 manner. Defendants were not required to file their responsive on the deadline, they
2 could have filed their motion any time before. Counsel is not responsible for the fact
3 that Mr. Kane and Mr. Clopper practice last minute law. Defendants have completely
4 and utterly to demonstrate any diligence towards the meeting of their deadlines.
5 Therefore, no good cause exists for the extension of time under Fed. R. Civ. P. 6

6 B. Good Cause Does Not Exist Under Fed. R. Civ. P. 6 To Extend Time For
7 LR 7-3

8 Since Defendants were required to file their responsive pleading not later than
9 October 4, 2023, Defendants were obligated to meet and confer no later than
10 September 27, 2023. Defendants completely failed to meet and confer as of this date,
11 having their request for extension be one week after their original deadline. As such,
12 Fed. R. Civ. P. 6 (b)(1)(B) applies. Defendants must therefore show that the party
13 failed to meet and confer because of some excusable neglect. Defendants never state
14 excusable neglect was the reason they failed to meet and confer. In fact, Defendants
15 fail to provide any legitimate reason as to why they failed to meet and confer before
16 the September 27, 2023 deadline. An extension for the deadline to file its Motion to
17 Dismiss would automatically extend Defendants' deadline to meet and confer, which
18 would be wholly inappropriate and be inconsistent with the plain language of Fed. R.
19 Civ. P. 6 (b)(1)(B). As such, good cause does not exist to grant an extension in the
20 current case.

21 C. The Court Should Not Extend Deadlines Set By Statute

22 Furthermore, several courts, both within the 9th circuit and outside, have
23 repeatedly held that Fed. R. Civ. P. 6 does not extend time for deadlines set by statute.
24 See *Parker v. Marcotte*, 198 F.3d 254 (9th Cir. 1999); *Yordy v. Astrue*, No. 1:09-CV-
25 03028-NJV, 2010 WL 653099 (N.D. Cal. Feb. 22, 2010); and § 1165 Extending
26 Time—In General, 4B Fed. Prac. & Proc. Civ. § 1165 (4th ed.). Fed. R. Civ. P. 15 (a)
27 clearly states that “unless the court orders otherwise, any required response to an
28 amended pleading must be made within the time remaining to respond to the original

1 pleading or within 14 days after service of the amended pleading, whichever is later.”
2 This shows a clear deference from the legislature that a responsive pleading should
3 be made within the confines the statute and that it should not be subject to Fed. R.
4 Civ. P. 6 (b)(1)(a). Since Fed. R. Civ. P. 15(a)(3) clearly sets out time in which a
5 responsive pleading is due, this honorable court should follow what so many other
6 courts have deemed necessary and not grant defendant extra time to file its responsive
7 pleading.

8 **III. Conclusion**

9 Because of the reasons highlighted above, Plaintiff asks this honorable court to
10 respectfully decline Defendants request for extension, as it would unduly prejudice
11 Plaintiff and would be wholly inconsistent with the Federal Rules of Civil Procedure
12 and the Local Rules established by this honorable court.

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15 Dated: October 13, 2023

BIBIYAN LAW GROUP, P.C.

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17 BY: */s/ Sarah H. Cohen*

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